



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable T. M. Trimble, First Assistant  
State Superintendent of Public Instruction  
Austin, Texas

Dear Sir:

Opinion Number O-5717  
Re: Use of State Available  
Funds of an independent  
school district which has  
maintained its schools for  
eight months, for the pay-  
ment of its outstanding  
bonds.

You request our opinion relative to the following  
matter, upon which you have been requested to advise the  
Fentress Independent School District:

"The Fentress Independent School District  
of Caldwell County has a surplus of State and  
County Available money, after they have con-  
ducted school for a period of eight months.  
They would like your opinion as to whether,  
under the provisions of Article 2827 of the  
Revised Civil Statutes, this surplus may be  
used in making a payment on the outstanding  
bonded indebtedness of the school district."

Article 2827, Revised Civil Statutes, 1925, reads  
as follows:

"The public free school funds shall not be  
expended except for the following purposes:

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"1. The State and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

"2. Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for State and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employes, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county districts to be approved by the county superintendent; provided, that when the State available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein. Acts 1905, p. 263; Acts 1919, p. 189." (Italics ours).

In Adams vs. Miles, 35 S. W. (2) 123, on rehearing 41 S. W. (2) 21, the question of use of surplus State available funds for construction of school buildings was considered by the Commission of Appeals. It was held in that case that, where the State available funds were sufficient to maintain the schools of the district for eight months, and leave a surplus, the remaining money could be used, under the

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express provisions of Subsection 2 of Article 2827, for building of schoolhouses. It is probable that if Article 2827 merely authorized use of the funds for "buying, building and repairing \* \* \* schoolhouses," it would be sufficiently broad to enable use of such surplus funds for retirement of debts incurred for those purposes (see *Lovo vs. Rockwall I.S.D.* (Tex. Civ. App.; error refused) 194 S. W. 659); but the authority conferred by the statute not only is for "buying, building and repairing schoolhouses," but the trustees are further authorized to use such funds "for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees." We would observe as did the Commission of Appeals in *Adams vs. Miles* (36 S.W. (2) 125) in considering its similar problem, that the Board of Trustees, in determining the uses to be made of such surplus funds --

" \* \* \* is especially authorized to do almost anything deemed necessary in their judgment to accomplish the purposes stated in Section 1 of Article 7 of the Constitution to the effect that 'a general diffusion of knowledge, being essential to the preservation of the liberty and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.' \* \* \*."

The statutory authority concerning use of such surplus State available funds is therefore, in our opinion, broad enough to permit use of such funds in retirement of bonded indebtedness of a school district.

Use of moneys derived from the county available school fund is limited by Article 2827, supra, to those purposes enumerated in Subsection 1 of that statute; neither the construction of buildings nor payment of outstanding bonded indebtedness is among the authorized uses. Moneys derived from the county available funds, therefore, may not be used to retire outstanding bonds.

June 20, 1943

Very truly yours

*Gov. L. B. Nichols*

By

*Gaynor Kendall*  
ATTORNEY GENERAL OF TEXAS  
Gaynor Kendall

APPROVED  
OPINION  
COMMITTEE